

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

**GWENDOLYN DAMIANO,**

**Plaintiff**

**v.**

**SCRANTON SCHOOL  
DISTRICT, *et al.*,**

**Defendants**

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**CIVIL ACTION NO. 3:13-2635**

**(JUDGE MANNION)**

**ORDER**

In light of the memorandum issued this same day, **IT IS HEREBY ORDERED THAT** District Defendants' motion to dismiss, (Doc. [51](#)), plaintiff's second amended complaint, (Doc. [46](#)), is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff's Fifth Amendment due process claims are **DISMISSED WITH PREJUDICE**. Plaintiff's constitutional claims against SSD, except for her First Amendment retaliation claim in Count VIII and her §1983 conspiracy claim in Count X regarding retaliation, are **DISMISSED WITH PREJUDICE**. Plaintiff's claims against the six defendant board members in their official capacity are **DISMISSED WITH PREJUDICE**. Plaintiff's request for punitive damages against the six defendant board members in their official capacity is **DISMISSED WITH PREJUDICE**. Plaintiff's 14<sup>th</sup> Amendment pre-deprivation due process claims raised in Counts I-V of her second amended complaint are **DISMISSED WITH PREJUDICE**. Plaintiff's First Amendment prior restraint retaliation claim contained in Count III of her second amended complaint is **DISMISSED WITH PREJUDICE**. Plaintiff's 14<sup>th</sup> Amendment

stigma-plus claim contained in Count VI of her second amended complaint is **DISMISSED WITH PREJUDICE**. Plaintiff's 14<sup>th</sup> Amendment post-deprivation procedural due process claims contained in Count VII of her second amended complaint are **DISMISSED WITH PREJUDICE**. District Defendants' motion to dismiss plaintiff's First Amendment retaliation claim contained in Count VIII of her second amended complaint is **DENIED** and this claim is **PERMITTED TO PROCEED** against SSD and the six board members in their individual capacity. Plaintiff's claim for punitive damages regarding Count VIII against the six board members in their individual capacity is **PERMITTED TO PROCEED**.

Defendant Boland's motion to dismiss plaintiff's second amended complaint, (Doc. [54](#)), is **GRANTED IN PART** and **DENIED IN PART**. Defendant Boland's motion is **GRANTED** with respect to plaintiff's 14<sup>th</sup> Amendment due process claim in Count IX and this claim is **DISMISSED WITH PREJUDICE**. Defendant Boland's motion is **GRANTED** with respect to plaintiff's First Amendment retaliation claim in Count IX and this claim is **DISMISSED WITH PREJUDICE** against Boland in her individual capacity. Plaintiff's claims against defendant Boland in her official capacity are **DISMISSED WITH PREJUDICE**. Thus, Count IX is **DISMISSED WITH PREJUDICE**.

Additionally, plaintiff's §1983 conspiracy claim in Count X against District Defendants and defendant Boland regarding her 14<sup>th</sup> Amendment due

process rights is **DISMISSED WITH PREJUDICE**. Plaintiff's conspiracy claim under §1983 in Count X is **PERMITTED TO PROCEED** against all defendants regarding only her First Amendment retaliation claims.

Finally, defendants will be directed to file their answers to the remaining claims of plaintiff's second amended complaint within **fourteen (14) days** of the date of this order.

*s/ Malachy E. Mannion*  
**MALACHY E. MANNION**  
United States District Judge

**Date: September 30, 2015**

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